IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.280 of 2003.

Date of decision: 19.12.2006

Dole Ram ….. **Appellant**

Versus

State of Himachal Pradesh ……. **Respondent**

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The Hon'ble Mr.Justice Surjit Singh, J.

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting ?[1]

For the appellant : Mr.Anup Chitkara, Advocate,

For the respondent : Mr.Som Dutt Vasudeva,Addl. A. G.

Surjit Singh,J. (Oral)

Heard and gone through the records.

The appellant has been convicted of an offence, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act and sentenced to undergo simple imprisonment for 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for further period of six months for allegedly possessing 11.500 kgs. of charas, while travelling by bus No.HP-33-2107 from Mandi to Kullu on 19.2.2002. It has been alleged that around 8.00 p.m. when the bus stopped at a place called Aut, to enable the passengers to take tea and snacks, a

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

police party headed by PW-8 Narinder Kumar, Inspector, boarded the bus for checking the passengers and their luggage. The appellant was allegedly found sitting on seat No.22 of the bus. By his side, on the same bench of which seat No.22 was a part, a bag was found lying on seat No.23, which was allegedly held by the appellant by its straps. On touching the bag, Inspector felt that it contained charas in the shape of fingers. On suspicion, the appellant was given an option for being searched in the presence of a Gazetted Officer or a Magistrate and on the appellant's raising no objection to his search on the spot, the said Inspector conducted the search in presence of two independent witnesses, namely, PW-7 Nirbhay Singh and a shopkeeper Gulab Singh. In the course of search of the bag, charas contained in plastic bag was recovered. On weighment, it was found to be 11.500 kgs. Two samples weighing 25 gms. each, were taken out. The samples and the remaining charas were made up into separate parcels and the same were sealed with a seal which produced the impression of letter 'T' of English alphabet. Thereafter, a report was sent to the concerned police station where the case was registered. Various papers in the form of search and seizure memos, giving of an option to the appellant for being searched in the presence of a Magistrate or a Gazetted Officer etc. etc., were prepared. The case property was deposited with MHC Ram Lal. One sample parcel was sent to the Chemical

Laboratory. The Chemical Examiner reported that the sample was of charas. On receipt of the report of the Chemical Examiner, the appellant was sent up for trial.

The trial Court charged the appellant with an offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act. The prosecution examined eight witnesses to bring the charge home to the appellant. The appellant in his statement u/s 313 Cr.PC denied that the charas belonged to him. He took the plea, while cross-examining the prosecution witnesses that the bag was lying in the aisle and that the police planted the same on him.

The trial Court accepted the prosecution version. It did not accept the appellant’s plea and consequently convicted and sentenced him, as aforesaid.

Having heard the learned counsel for the appellant and the learned Additional Advocate General and gone through the record of the case, we have no doubt in our mind that this is not a fit case for conviction.

Shri Narinder Kumar, Inspector appeared as PW-8 and stated that the bag was lying on the same bench on which the appellant was sitting and was holding it by its straps, when he reached the aisle, in front of seat No.22. His statement is contradicted by PW HC Ram Lal, upon whose testimony the prosecution very much relies. This witness has stated that the

bag was lying on seat No. 23, which was across the aisle, meaning thereby that the appellant was sitting on one bench having seat No.22 as part of it, while the bag was lying on the other bench across the first mentioned bench, having seat No.23 as its part. This contradiction alone is sufficient to disbelieve the entire prosecution version. The trial Court has not even taken note of this contradiction in the testimony of the police officials. The photographs, which were taken on the spot, at the instance of the Investigating Officer i.e. PW-8 Shri Narinder Kumar, show the bag lying on the same bench a seat of which the appellant was occupying. This fact is enough to jump to the conclusion that the Inspector did the padding. In cross-examination PW-8 Narinder Kumar himself stated that photographs Ex.PA to PD and PF were taken after picking up the bag from the passage and placing it on seat No. 22 and pushing the appellant to the adjoining seat No.23, which according to him was the part of the same bench.

Again PW-8 Narinder Kumar himself has rendered the prosecution version highly doubtful when he says that he enquired from all the passengers about the ownership of the bag. When according to his testimony, the bag was lying on the same bench, which was occupied by the appellant and he was holding its straps, where was the occasion or need to make enquiries with other passengers, as to the ownership of the bag. This statement itself suggests that

Narinder Kumar PW-8 was not sure that the appellant was the owner of the bag containing charas.

The conductor of the bus, namely, PW-7 in his testimony stated that there were 30 to 35 passengers and that majority of them had alighted from the bus for taking tea and snacks at the nearby stalls, when the police party came and asked him and the driver to require the passengers to occupy their seats as they wanted to search the persons and the luggage of all the passengers and that thereafter the passengers were made to occupy their seats. The testimony of this witness belies the testimony of PW-8 Narinder Kumar Inspector that there were only 15 to 20 passengers in the bus when the checking was done and that the checking was done after getting the bus stopped, when it appeared from Mandi side.

It is because of the above stated reasons that we have said at the very outset that this is not a fit case for conviction. Consequently, the appeal is accepted. The appellant's conviction and sentences are set aside and he is acquitted. He being in jail, to serve out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

(Surjit Singh , J.

(Dev Darshan Sud),J.

December 19, 2006
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